

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JAVIER ANDRES USANDIVARAS,  
Plaintiff,

v.

GARY EGGLESTON, Everett West, Brian  
Farman, Patrick Spak, Kyle Burbridge,  
Defendants.

No. 2:18-cv-00889

**PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged:

1                   **Kirkland Police Department Personnel records on each of the individual**  
2 **defendant officers.**

3       3.       SCOPE

4               The protections conferred by this agreement cover not only confidential material (as  
5 defined above), but also (1) any information copied or extracted from confidential material;  
6 (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any  
7 testimony, conversations, or presentations by parties or their counsel that might reveal  
8 confidential material.

9               However, the protections conferred by this agreement do not cover information that  
10 is in the public domain or becomes part of the public domain through trial or otherwise.

11       4.       ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

12           4.1       Basic Principles. A receiving party may use confidential material that is  
13 disclosed or produced by another party or by a non-party in connection with this case only  
14 for prosecuting, defending, or attempting to settle this litigation. Confidential material may  
15 be disclosed only to the categories of persons and under the conditions described in this  
16 agreement. Confidential material must be stored and maintained by a receiving party at a  
17 location and in a secure manner that ensures that access is limited to the persons authorized  
18 under this agreement.

19           4.2       Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
20 ordered by the court or permitted in writing by the designating party, a receiving party may  
21 disclose any confidential material only to:

22                   (a)       the receiving party’s counsel of record in this action, as well as  
23 employees of counsel to whom it is reasonably necessary to disclose the information for  
24 this litigation;

25                   (b)       the officers, directors, and employees (including in house counsel) of  
26 the receiving party to whom disclosure is reasonably necessary for this litigation, unless the  
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1 parties agree that a particular document or material produced is for Attorney's Eyes Only  
2 and is so designated;

3 (c) experts and consultants to whom disclosure is reasonably necessary  
4 for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"  
5 (Exhibit A);

6 (d) the court, court personnel, and court reporters and their staff;

7 (e) copy or imaging services retained by counsel to assist in the  
8 duplication of confidential material, provided that counsel for the party retaining the copy  
9 or imaging service instructs the service not to disclose any confidential material to third  
10 parties and to immediately return all originals and copies of any confidential material;

11 (f) during their depositions, witnesses in the action to whom disclosure  
12 is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be  
13 Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the  
14 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
15 confidential material must be separately bound by the court reporter and may not be  
16 disclosed to anyone except as permitted under this agreement;

17 (g) the author or recipient of a document containing the information or a  
18 custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or  
20 discussing or referencing such material in court filings, the filing party shall confer with the  
21 designating party to determine whether the designating party will remove the confidential  
22 designation, whether the document can be redacted, or whether a motion to seal or  
23 stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures  
24 that must be followed and the standards that will be applied when a party seeks permission  
25 from the court to file material under seal.  
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1       5.       DESIGNATING PROTECTED MATERIAL

2           5.1       Exercise of Restraint and Care in Designating Material for Protection. Each  
3 party or non-party that designates information or items for protection under this agreement  
4 must take care to limit any such designation to specific material that qualifies under the  
5 appropriate standards. The designating party must designate for protection only those parts  
6 of material, documents, items, or oral or written communications that qualify, so that other  
7 portions of the material, documents, items, or communications for which protection is not  
8 warranted are not swept unjustifiably within the ambit of this agreement.

9           Mass, indiscriminate, or routinized designations are prohibited. Designations that  
10 are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
11 unnecessarily encumber or delay the case development process or to impose unnecessary  
12 expenses and burdens on other parties) expose the designating party to sanctions.

13           If it comes to a designating party's attention that information or items that it  
14 designated for protection do not qualify for protection, the designating party must promptly  
15 notify all other parties that it is withdrawing the mistaken designation.

16           5.2       Manner and Timing of Designations. Except as otherwise provided in this  
17 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated  
18 or ordered, disclosure or discovery material that qualifies for protection under this  
19 agreement must be clearly so designated before or when the material is disclosed or  
20 produced.

21           (a)       Information in documentary form: (*e.g.*, paper or electronic  
22 documents and deposition exhibits, but excluding transcripts of depositions or other pretrial  
23 or trial proceedings), the designating party must affix the word "CONFIDENTIAL" to each  
24 page that contains confidential material. If only a portion or portions of the material on a  
25 page qualifies for protection, the producing party also must clearly identify the protected  
26 portion(s) (*e.g.*, by making appropriate markings in the margins).

1 (b) Testimony given in deposition or in other pretrial proceedings: the  
2 parties and any participating non-parties must identify on the record, during the deposition  
3 or other pretrial proceeding, all protected testimony, without prejudice to their right to so  
4 designate other testimony after reviewing the transcript. Any party or non-party may, within  
5 fifteen days after receiving the transcript of the deposition or other pretrial proceeding,  
6 designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-  
7 party desires to protect confidential information at trial, the issue should be addressed  
8 during the pre-trial conference.

9 (c) Other tangible items: the producing party must affix in a prominent  
10 place on the exterior of the container or containers in which the information or item is  
11 stored the word "CONFIDENTIAL." If only a portion or portions of the information or  
12 item warrant protection, the producing party, to the extent practicable, shall identify the  
13 protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
15 to designate qualified information or items does not, standing alone, waive the designating  
16 party's right to secure protection under this agreement for such material. Upon timely  
17 correction of a designation, the receiving party must make reasonable efforts to ensure that  
18 the material is treated in accordance with the provisions of this agreement.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any party or non-party may challenge a designation  
21 of confidentiality at any time. Unless a prompt challenge to a designating party's  
22 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
23 unnecessary economic burdens, or a significant disruption or delay of the litigation, a party  
24 does not waive its right to challenge a confidentiality designation by electing not to mount a  
25 challenge promptly after the original designation is disclosed.

26 6.2 Meet and Confer. The parties must make every attempt to resolve any  
27 dispute regarding confidential designations without court involvement. Any motion

1 regarding confidential designations or for a protective order must include a certification, in  
2 the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet  
3 and confer conference with other affected parties in an effort to resolve the dispute without  
4 court action. The certification must list the date, manner, and participants to the conference.  
5 A good faith effort to confer requires a face-to-face meeting or a telephone conference.

6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
7 intervention, the designating party may file and serve a motion to retain confidentiality  
8 under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The  
9 burden of persuasion in any such motion shall be on the designating party. Frivolous  
10 challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary  
11 expenses and burdens on other parties) may expose the challenging party to sanctions. All  
12 parties shall continue to maintain the material in question as confidential until the court  
13 rules on the challenge.

14 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
15 OTHER LITIGATION

16 If a party is served with a subpoena or a court order issued in other litigation that  
17 compels disclosure of any information or items designated in this action as  
18 “CONFIDENTIAL,” that party must:

19 (a) promptly notify the designating party in writing and include a copy  
20 of the subpoena or court order;

21 (b) promptly notify in writing the party who caused the subpoena or  
22 order to issue in the other litigation that some or all of the material covered by the subpoena  
23 or order is subject to this agreement. Such notification shall include a copy of this  
24 agreement; and

25 (c) cooperate with respect to all reasonable procedures sought to be  
26 pursued by the designating party whose confidential material may be affected.  
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1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
3 confidential material to any person or in any circumstance not authorized under this  
4 agreement, the receiving party must immediately (a) notify in writing the designating party  
5 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of  
6 the protected material, (c) inform the person or persons to whom unauthorized disclosures  
7 were made of all the terms of this agreement, and (d) request that such person or persons  
8 execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as  
9 Exhibit A.

10 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
11 PROTECTED MATERIAL

12 When a producing party gives notice to receiving parties that certain inadvertently  
13 produced material is subject to a claim of privilege or other protection, the obligations of  
14 the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
15 provision is not intended to modify whatever procedure may be established in an e-  
16 discovery order or agreement that provides for production without prior privilege review.  
17 The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth  
18 herein.

19 10. NON TERMINATION AND RETURN OF DOCUMENTS

20 Within 60 days after the termination of this action, including all appeals, each  
21 receiving party must return all confidential material to the producing party, including all  
22 copies, extracts and summaries thereof. Alternatively, the parties may agree upon  
23 appropriate methods of destruction.

24 Notwithstanding this provision, counsel are entitled to retain one archival copy of  
25 all documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
26 deposition and trial exhibits, expert reports, attorney work product, and consultant and  
27 expert work product, even if such materials contain confidential material.

1 The confidentiality obligations imposed by this agreement shall remain in effect  
2 until a designating party agrees otherwise in writing or a court orders otherwise.  
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5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 DATED: October 17, 2018

s/Harry Williams IV  
Harry Williams IV, WSBA #41020  
Attorney for Plaintiff


8  
9 DATED: October 17, 2018

Jeremy W. Culumber  
Jeremy W. Culumber, WSBA # 35423  
Attorney for Defendants

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11 PURSUANT TO STIPULATION, IT IS SO ORDERED

12 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of  
13 any documents in this proceeding shall not, for the purposes of this proceeding or any other  
14 proceeding in any other court, constitute a waiver by the producing party of any privilege  
15 applicable to those documents, including the attorney-client privilege, attorney work-product  
16 protection, or any other privilege or protection recognized by law.  
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18 DATED: October 18, 2018

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21 Marsha J. Pechman  
22 United States District Judge  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, Harry Williams IV, of 707 East Harrison, Seattle, WA 98102, declare under penalty  
4 of perjury that I have read in its entirety and understand the Stipulated Protective Order that  
5 was issued by the United States District Court for the Western District of Washington on in  
6 the case of *Usandivaras v. Eggleston*; USDC Western Dist. Cause No. 2:18-cv-00889. I  
7 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and  
8 I understand and acknowledge that failure to so comply could expose me to sanctions and  
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
10 manner any information or item that is subject to this Stipulated Protective Order to any  
11 person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the  
13 Western District of Washington for the purpose of enforcing the terms of this Stipulated  
14 Protective Order, even if such enforcement proceedings occur after termination of this action.

15 Date: October 17, 2018

16 City and State where sworn and signed: Seattle, WA

17 Printed name: Harry Williams IV

18 Signature: s/ Harry Williams IV